

Application No.: 09/874,717  
Amendment dated: October 12, 2005  
Reply to Office Action of: July 12, 2005

### **REMARKS**

This Amendment is responsive to the Office Action dated July 12, 2005. Claims 1-29 are pending in the application and presently stand rejected. By this Amendment, claims 1, 10, 16, 22 and 26 are amended. Applicants respectfully request continued consideration of the claims here and requests the Examiner to withdraw the rejections and allow this application.

#### **In the Abstract**

The abstract was objected to because the abstract exceeded 150 words.

Applicants have amended the abstract to a proper length.

#### **In the Specification**

The disclosure was objected to because it contained embedded hyperlinks and/or other forms of browser-executable code.

Applicants have removed all embedded hyperlinks and all other forms of browser-executable code from the disclosure.

#### **Objection to the Claims**

Claim 26 was objected to.

Applicants have amended claim 26 as suggested by the Examiner.

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### §103 Rejections

Claims 1-4, 6-12, 14-18, 20-24 and 28-29 were rejected under 35 U.S.C. §103(a) as being unpatentable over Benc Software Production's web page describing "Application Usage Hack 0.7" 2000.

Claims 25 and 27 were rejected under 35 U.S.C. §103(a) as being unpatentable over Benc Software Production's web page as applied to claims 22 and 26 and further, in view of Lowell (United States Pat. No. 6,381,632).

Claims 5, 13 and 19 were rejected under 35 U.S.C. §103(a) as being unpatentable over Benc Software Production's web page as applied to claims 1, 10 and 16 and further in view of Watch-Ya! (2000).

Applicants respectfully submit that the independent claims (claims 1, 10, 16, 22 and 26) are patentable over Benc, Lowell and Watch-Ya! For example, Applicants' invention as recited in independent claim 1 is directed to a method of monitoring usage of an electronic device having a plurality of application programs. Claim 1 specifies gathering the usage statistics of the application programs and storing these usage statistics. Claim 1 further specifies automatically transmitting these stored usage statistics to a server on a regular basis, whereby said server tabulates said usage statistics. Supporting disclosure for Applicants' invention can be found throughout the specification (for example, see page 23, lines 6-20). Claims 10, 16, 22 and 26 contain similar limitations.

Benc, Lowell, and "Watch-Ya!" do not disclose automatically transmitting stored usage statistics to a server on a regular basis, whereby said server tabulates said usage statistics. Although the Examiner has taken official notice indicating that such operations are old and well known to a

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person of ordinary skill in the art, Applicants' respectfully traverse the Examiner's position.

Applicants request the Examiner to point to a reference or teaching that accomplishes steps of the claimed invention. Applicants' respectfully believe that the Examiner conveniently relies on hindsight in arriving at his position that the claimed would have been obvious in view of the references and teachings he asserts here. Absent specific teachings, it would be improper to modify the references and teachings as the Examiner suggests because there is nothing in the cited prior art references, either alone or in combination, to suggest the desirability of the claimed subject matter. That the construction in a particular prior art reference would have resulted in the claimed combination had it followed the "common practice" of attaching certain parts does not show obviousness at the time of the invention but rather reflects improper hindsight analysis and the reading into the art of Applicant's own teachings.

*In re Raynes*, 7 F.3d 1037, 1039 (Fed. Cir. 1993):

When determining whether a new combination of known elements would have been obvious in terms of 35 U.S.C. § 103, the analytic focus is upon the state of knowledge at the time the invention was made. The Commissioner bears the burden of showing that such knowledge provided some teaching, suggestion, or motivation to make the particular combination that was made by the applicant. *In re Oetiker*, 977 F.2d 1443, 1445-47, 24 U.S.P.Q.2D (BNA) 1443, 1444-46 (Fed. Cir. 1992); *In re Piasecki*, 745 F.2d 1468, 1471-72, 223 U.S.P.Q. (BNA) 785, 788 (Fed. Cir. 1984). This determination is made from the viewpoint of the hypothetical person of ordinary skill in the field of the invention. 35 U.S.C. § 103; *In re Gorman*, 933 F.2d 982, 986, 18 U.S.P.Q.2D (BNA) 1885, 1888 (Fed. Cir. 1991).

*In re Deminski*, 796 F.2d 436, 442 (Fed. Cir. 1986):

There was no suggestion in the prior art to provide Deminski with the motivation to design the valve assembly so that it would be removable as a unit. The board argues that if Pocock had followed the "common practice" of attaching the valve stem to the valve structure, then the valve assembly would be removable as a unit. The only way the board could have arrived at its conclusion was through hindsight analysis by reading into the art Deminski's own teachings. Hindsight analysis is clearly improper, since the statutory test is whether "the subject matter as a whole would have been obvious at the time the invention was made." 35 U.S.C. § 103 (1982); *In re Spornoble*, 56 C.C.P.A. 823, 405 F.2d 578, 585, 160 U.S.P.Q. (BNA) 237, 243 (CCPA 1969).

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Accordingly, Applicants believe that claims 1, 10, 16, 22 and 26 are patentable over Benc, Lowell and Watch-Ya! – taken either alone or in combination – for at least this reason.

Claims 2-9 depend on claim 1. Because claim 1 is patentable over the cited references, claims 2-9 are also patentable over the cited references by virtue of their dependency on claim 1.

Claims 11-15 depend on claim 10. Because claim 10 is patentable over the cited references, claims 11-15 are patentable over the cited references based on their dependency on claim 10.

Claims 17-21 depend on claim 16. Because claim 16 is patentable over the cited references, claims 17-21 are patentable over the cited references based of their dependency on claim 16.

Claims 23-25 depend on claim 22. Because claim 22 is believed to be patentable over the cited references, claims 23-25 are patentable over the cited references by virtue of their dependency on claim 22.

Claims 27-29 depend on claim 26. Because claim 26 is patentable over the cited references, claims 27-29 are also patentable over the cited references on the basis of their dependency on claim 26.

Applicant respectfully requests that the Examiner reconsider his opinion of the patentability of claims 1-29 in light of the reasons urged above.

### **CONCLUSION**

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Applicants respectfully submit that all of the claims now pending in the application are in condition for allowance, which action is earnestly solicited.

It is submitted that these claims, as originally presented, are patentably distinct over the prior art cited by the Examiner, and that these claims were in full compliance with the requirements of 35 U.S.C. §112. Changes to these claims, as presented here, are not made for the purpose of patentability within the meaning of 35 U.S.C. §§101, 102, 103 or 112. Rather, these changes are made simply for clarification and to better express the scope of protection to which Applicants are entitled.

The statements that are urged above with respect to the disclosures in the cited references represent the present opinions of the Applicants' undersigned representative. In the event the Examiner disagrees with any such opinions, it is respectfully requested that the Examiner specifically indicate the portions of the respective reference that provides the basis for a contrary view.

If any issues remain, or if the Examiner has any further suggestions, he is invited to call the undersigned to resolve those issues.

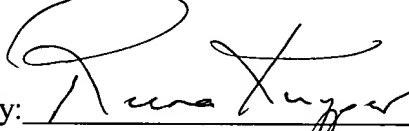
The Examiner is hereby authorized to charge any insufficient fees or credit any overpayment associated with the above-identified application to Deposit Account No. 50-3102.

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The Examiner's continued consideration of this matter is earnestly solicited.

Respectfully submitted,

BERRY & ASSOCIATES P.C.



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Dated: October 12, 2005

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